

**ASSEMBLY BILL**

**No. 26**

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**Introduced by Assembly Member Migden**

December 7, 1998

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An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Sections 1261 and 1374.58 to the Health and Safety Code, and to add Section 10121.7 to the Insurance Code, relating to domestic partners.

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as introduced, Migden. Domestic partners.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would define “domestic partners” and provide for the registration of domestic partnerships with the Secretary of State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months has elapsed from the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic partnership, except where the previous domestic partnership ended because one of the partners died.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, and distribute these forms to each county clerk. The bill would require the Secretary of State to establish by

regulation and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. A Declaration of Domestic Partnership would be required to be signed under penalty of perjury. By expanding the crime of perjury and by increasing the duties of the county clerk, the bill would impose a state-mandated local program.

This bill would provide that any domestic partnership entered into outside of this state, which would be valid by the laws of the jurisdiction under which the partnership was created, shall be valid in this state.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.

(3) Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Under existing law, a willful violation of any of these provisions is punishable as either a felony or a misdemeanor. Existing law also provides for the regulation of policies of disability insurance administered by the Insurance Commissioner.

Existing law requires that health care service plans and disability insurers provide coverage for certain benefits and services.

This bill would require a group health care service plan and a policy of disability insurance that provides hospital, medical, or surgical expense benefits for employees, subscribers, insureds, or policyholders and their dependents to provide eligibility and benefits to a domestic partner of an employee, subscriber, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a dependent of an employee, subscriber, insured, or policyholder. The bill would also require a health care service plan or a policy of group disability insurance that provides hospital, medical, or surgical expense benefits for employees, subscribers, insureds, or policyholders and their dependents to enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the employee,



subscriber, insured, or policyholder when that employee, subscriber, insured, or policyholder at any time makes an application for enrollment to the employer or group administrator.

Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 2.5 (commencing with Section  
2 297) is added to the Family Code, to read:

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4 DIVISION 2.5. DOMESTIC PARTNER  
5 REGISTRATION

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7 PART 1. DEFINITIONS

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9 297. (a) Domestic partners are two adults who have  
10 chosen to share one another's lives in an intimate and  
11 committed relationship of mutual caring.



(b) A domestic partnership shall be established when all of the following requirements are met:

(1) Both persons have a common residence.

(2) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership.

(3) Neither person is married or a member of another domestic partnership.

(4) The two persons are not related by blood in a way which would prevent them from being married to each other in this state.

(5) Both persons are at least 18 years of age.

(6) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division.

(c) "Have a common residence" means that two people are cohabitants. It is not necessary that the legal right to possess the common residence be in both of their names. Two people are cohabitants even if one or both have additional residences. Domestic partners do not cease to be cohabitants if one leaves the common residence but intends to return.

(d) "Basic living expenses" means food and shelter. It also means any other cost, such as medical care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

(e) "Joint responsibility" means that each partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for herself or himself. Anyone to whom these expenses are owed may enforce this responsibility.

## PART 2. REGISTRATION

298. (a) The Secretary of State shall prepare forms entitled "Declaration of Domestic Partnership" and "Notice of Termination of Domestic Partnership" to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(b) (1) The Secretary of State shall distribute these forms to each county clerk. These forms shall be available to the public at the office of the Secretary of State and each county clerk.

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and shall charge these fees to persons filing the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) sign the form under penalty of perjury, and (4) have a notary public notarize his or her signature.

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership until at least six months after the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State pursuant to subdivision (b) of Section 299 in connection with the termination of the most recent domestic partnership. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

### PART 3. TERMINATION

299. (a) A domestic partnership is terminated when any one of the following occurs:

(1) One partner gives or sends to the other partner a written notice that he or she is terminating the partnership.

(2) One of the domestic partners dies.

(3) One of the domestic partners marries.

(4) The domestic partners no longer have a common residence.

(b) Upon termination of a domestic partnership, at least one former partner shall file a Notice of Termination of Domestic Partnership with the Secretary of State. The partner who files the Notice of Termination of Domestic Partnership shall send a copy of the notice to the last known address of the other partner.

(c) A former domestic partner who has given a copy of a Declaration of Domestic Partnership to any third party in order to qualify for any benefit or right shall, within 60 days of termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party who suffers a loss as a result of failure by the domestic partner to send this notice shall be entitled to seek recovery from the partner who was obligated to send it for any actual loss resulting thereby.

(d) Failure to file the Notice of Termination of Domestic Partnership required in subdivision (b) or to provide the third party notice required in subdivision (c) shall not delay or prevent the termination of the domestic partnership.

#### PART 4. LEGAL EFFECT

299.5. (a) The obligations that two people have to each other as a result of creating a domestic partnership are those described in Section 297. Registration as a domestic partner under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in this division, Sections 1261 and 1374.58 of the Health and Safety Code, or Section 10121.7 of the Insurance Code.

The provisions relating to domestic partners provided in this division, Sections 1261 and 1374.58 of the Health and Safety Code, and Section 10121.7 of the Insurance Code shall not diminish any right under any other provision of law.

(b) Upon the termination of a domestic partnership, the partners, from that time forward, shall incur none of

1 the obligations to each other as domestic partners that are  
2 created by this division, Sections 1261 and 1374.58 of the  
3 Health and Safety Code, or Section 10121.7 of the  
4 Insurance Code.

5 (c) Any domestic partnership entered into outside of  
6 this state, which would be valid by the laws of the  
7 jurisdiction under which the partnership was created,  
8 shall be valid in this state.

9 SEC. 2. Section 1261 is added to the Health and Safety  
10 Code, to read:

11 1261. (a) A health facility shall allow a patient's  
12 domestic partner, the children of the patient's domestic  
13 partner, and the domestic partner of the patient's parent  
14 or child to visit, unless one of the following is met:

15 (1) No visitors are allowed.

16 (2) The facility reasonably determines that the  
17 presence of a particular visitor would endanger the  
18 health or safety of a patient, member of the health facility  
19 staff, or other visitor to the health facility, or would  
20 significantly disrupt the operations of a facility.

21 (3) The patient has indicated to health facility staff  
22 that the patient does not want this person to visit.

23 (b) This section may not be construed to prohibit a  
24 health facility from otherwise establishing reasonable  
25 restrictions upon visitation, including restrictions upon  
26 the hours of visitation and number of visitors.

27 (c) For purposes of this section, "domestic partner"  
28 has the same meaning as that term is used in Section 297  
29 of the Family Code.

30 SEC. 3. Section 1374.58 is added to the Health and  
31 Safety Code, to read:

32 1374.58. (a) A group health care service plan that  
33 provides hospital, medical, or surgical expense benefits  
34 for employees or subscribers and their dependents shall  
35 provide eligibility or benefits to the domestic partner of  
36 an employee or subscriber to the same extent, and subject  
37 to the same terms and conditions, as provided to a  
38 dependent of the employee or subscriber.

39 (b) A health care service plan that provides hospital,  
40 medical, or surgical expense benefits for employees or

1 subscribers and their dependents shall enroll as a  
2 dependent, upon application by the employer or group  
3 administrator, a domestic partner of an employee or  
4 subscriber, at any time the employee or subscriber makes  
5 an application for enrollment to the employer or group  
6 administrator.

7 (c) For purposes of this section, the term “domestic  
8 partner” shall have the same meaning as that term is used  
9 in Section 297 of the Family Code.

10 SEC. 4. Section 10121.7 is added to the Insurance  
11 Code, to read:

12 10121.7. (a) A policy of group disability insurance  
13 that provides hospital, medical, or surgical expense  
14 benefits for employees, insureds, or policyholders and  
15 their dependents shall provide eligibility and benefits to  
16 the domestic partner of an employee, insured, or  
17 policyholder to the same extent, and subject to the same  
18 terms and conditions, as provided to a dependent of the  
19 employee, insured, or policyholder.

20 (b) Each policy of group disability insurance that  
21 provides hospital, medical, or surgical expense benefits  
22 for employees, insureds, or policyholders and their  
23 dependents shall enroll as a dependent, upon application  
24 by the employer or group administrator, a domestic  
25 partner of the employee, insured, or policyholder when  
26 that employee, insured, or policyholder at any time  
27 makes an application for enrollment to the employer or  
28 group administrator.

29 (c) For purposes of this section, the term “domestic  
30 partner” shall have the same meaning as that term is used  
31 in Section 297 of the Family Code.

32 SEC. 5. No reimbursement is required by this act  
33 pursuant to Section 6 of Article XIII B of the California  
34 Constitution for certain costs that may be incurred by a  
35 local agency or school district because in that regard this  
36 act creates a new crime or infraction, eliminates a crime  
37 or infraction, or changes the penalty for a crime or  
38 infraction, within the meaning of Section 17556 of the  
39 Government Code, or changes the definition of a crime





1 within the meaning of Section 6 of Article XIII B of the  
2 California Constitution.

3 However, notwithstanding Section 17610 of the  
4 Government Code, if the Commission on State Mandates  
5 determines that this act contains other costs mandated by  
6 the state, reimbursement to local agencies and school  
7 districts for those costs shall be made pursuant to Part 7  
8 (commencing with Section 17500) of Division 4 of Title  
9 2 of the Government Code. If the statewide cost of the  
10 claim for reimbursement does not exceed one million  
11 dollars (\$1,000,000), reimbursement shall be made from  
12 the State Mandates Claims Fund.

13 Notwithstanding Section 17580 of the Government  
14 Code, unless otherwise specified, the provisions of this act  
15 shall become operative on the same date that the act  
16 takes effect pursuant to the California Constitution.

